

STATE OF MICHIGAN
COURT OF APPEALS

In re G. M. HELGE, Minor.

UNPUBLISHED
April 12, 2016

No. 329082
Oakland Circuit Court
Family Division
LC No. 14-817007-NA

Before: GLEICHER, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals as of right an order terminating his parental rights to his minor daughter pursuant to MCL 712A.19b(3)(a)(ii) (deserted child for at least 91 days), (g) (failed to provide proper care and custody), and (j) (reasonable likelihood of harm). We affirm.

On February 13, 2014, the Department of Health and Human Services (DHHS) filed a petition seeking temporary wardship of the one-month-old child as to respondent father, and termination of the mother's parental rights at the initial dispositional hearing. The petition stated that mother's parental rights to another child were terminated in 2000 because of substance abuse and unstable housing. The petition also stated that mother admitted to using cocaine while pregnant with this child. Further, mother's random drug screen performed on February 10, 2014 was positive for cocaine, and she admitted to using cocaine and marijuana three days before the test. According to the petition, respondent resided in the same home with mother, knew that mother was using drugs while pregnant and that she continued to do so after giving birth to the child, but respondent did nothing to remove the child from the unsafe environment.

At the subsequent pretrial hearing, mother entered a plea of no contest to the petition and respondent requested an adjudication trial on the issue of jurisdiction. At the May 2014 adjudication trial, respondent testified about his long history of substance abuse, noting that he had been an addict since the age of 12 and had been through several treatment programs. He had been clean since September 2012. Respondent denied knowing that the child's mother used drugs while pregnant, and denied knowing that she had relapsed shortly after the child was born. However, the DHHS worker who conducted the February 10, 2014 random drug screen on the child's mother testified that, when mother admitted her drug use, she also admitted that respondent was aware of her drug use and was upset with her, which the DHHS worker noted in her report. The DHHS worker further testified that, at a family team meeting held the next day, respondent admitted that he was aware of mother's drug use.

Following the trial, the court found that statutory grounds for termination existed with regard to the child's mother, and that termination was in the child's best interests. The trial court also held that respondent was responsible for improper supervision of the child, took jurisdiction over the child, and ordered respondent to comply with a parent-agency agreement with the objective being reunification. Respondent's parent-agency agreement included that he was to complete parenting classes, participate in random drug screens, undergo a mental health assessment, maintain employment, and obtain adequate housing.

At the July 2014 dispositional review hearing, the DHHS worker and Guardian Ad Litem advised the court that respondent was suspected of relapsing into drug use and maintaining a relationship with the child's mother, who was also believed to be using drugs. A drug screen was requested and respondent admitted to the court that it would come back positive for cocaine. The court advised respondent that his parental rights would be terminated if he used drugs.

Respondent did not attend the October 2014 dispositional review hearing. He was not compliant with the parent-agency agreement, had no contact with the child, and was rumored to be homeless, living in his truck with the child's mother. Respondent also did not attend the November 2014 permanency planning hearing, and a supplemental petition to terminate his parental rights was authorized. Respondent attended the February 2015 pretrial. The court informed him that it was accepting the petition to terminate his parental rights because he failed to comply with the parent-agency agreement, had no contact with the child since June 2014, and tested positive for cocaine on January 3, 2015.

At the March 2015 bench trial on the statutory grounds for the supplemental petition to terminate respondent's parental rights, the DHHS worker who had been assigned to this matter since February 2014 testified that, despite several referrals for services, respondent was not in substantial compliance with the parent-agency agreement. He did not participate in any type of mental health services, had relapsed into drug use, did not participate in parenting classes, did not submit to the required random drug screens, did not obtain suitable housing, did not maintain the required contact with DHHS, had no plan in place or support system to care for the child such as daycare, and had no parental bond with the child—whom he had not seen since June 2014. Following the hearing, the trial court held that the asserted statutory grounds for termination of respondent's parental rights were established.

At the August 2015 best interests hearing, the psychologist who had performed a psychological evaluation on respondent in July 2015 testified that respondent had admitted that: (1) his housing was not suitable; (2) he had maintained a relationship with the child's mother whose parental rights to the child had been terminated; (3) he relapsed into drug use; (4) he did not know the child or have a parental bond with the child; (5) he had been depressed, and (6) he had suicidal thoughts in November 2014. The psychologist opined that it was not in the child's best interests to return to respondent's care considering respondent's substance abuse, emotional instability, and financial difficulties.

Further, the DHHS workers both testified that respondent was testing positive for the narcotic Tramadol and had not provided proof that a physician had prescribed that pain medication despite numerous requests. On the other hand, the child was thriving in her placement with her maternal aunt who provided her a suitable, stable, and safe environment and

planned to adopt her. The DHHS workers testified that it was in the child's best interests to terminate respondent's parental rights because she would be at risk of harm if returned to his care. During respondent's own testimony he admitted that: (1) he did not have suitable housing for the child and had been homeless during these proceedings; (2) he had stayed with the child's mother even after her parental rights had been terminated; (3) he had not seen the child since June 2014 because of his drug use; (4) he knew that he could have resumed visits with the child if he had consecutive negative drug screens but he was unable to do that; and (5) the child had no bond with him.

Following the hearing, the trial court held that it was in the child's best interests to terminate respondent's parental rights. Respondent was not in substantial compliance with the parent-agency agreement after about a year and a half, had not seen the child in over a year, was unable to provide two consecutive negative drug screens since October 2014, and was testing positive for the narcotic Tramadol but had not provided the requested documentation in that regard. The court noted that, although the child was placed with a relative, it remained in her best interests to terminate respondent's parental rights. This appeal followed.

Respondent argues that the trial court erred when it terminated his parental rights because a statutory ground for termination was not established by clear and convincing evidence. We disagree.

To terminate parental rights, the trial court must find at least one of the statutory grounds for termination listed in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review the trial court's factual findings and ultimate decision for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Olive/Metts Minors*, 297 Mich App at 41 (citation omitted).

Respondent's parental rights were terminated under MCL 712A.19b(3)(a)(ii), (g), and (j). Termination under MCL 712A.19b(3)(a)(ii) is proper when "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." Termination under MCL 712A.19b(3)(g) is proper when the parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to do so within a reasonable time considering the child's age. And termination is proper under MCL 712A.19b(3)(j) when there is a reasonable likelihood, based on the parent's conduct or capacity, that the child will be harmed if returned to the parent.

As discussed above, in May 2014 the court ordered respondent to comply with a parent-agency agreement. At the first review hearing in July 2014, respondent admitted to relapsing into drug use and tested positive for cocaine. The court warned respondent that his parental rights would be terminated if he continued to use drugs. Respondent then failed to appear at the October 2014 review hearing and failed to appear at the November 2014 permanency planning hearing. By this point in time, respondent had not complied at all with the parent-agency agreement, had not seen the child since June 2014, and was homeless. Respondent appeared at the February 2015 pretrial, and it was noted that he tested positive for cocaine in January 2015. He had not complied with the parent-agency agreement and had not seen the child. At the March

2015 bench trial, respondent still was not in substantial compliance with the parent-agency agreement, and continued to test positive for Tramadol. Respondent did not demonstrate that he could properly care for the child, in stable and appropriate housing, and with a planned support system in place either at the time of the trial or in the foreseeable future. He still had not seen the child since June 2014 and shared no parental bond with the child. In light of the record evidence, the trial court did not clearly err when it concluded that at least one of the asserted statutory grounds for termination of respondent's parental rights was established by clear and convincing evidence. See *In re Olive/Metts Minors*, 297 Mich App at 40.

Next, respondent argues that the trial court clearly erred when it terminated his parental rights because termination was not in the child's best interests. After review for clear error, we disagree. See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

A trial court must order termination of parental rights if a statutory ground for termination is established by clear and convincing evidence and the trial court finds by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In making that determination, the court may consider a variety of factors, including the parent's history, parenting ability, and participation in a treatment program, the child's age and bond to the parent, the foster care environment, and the child's need for permanency, stability, and finality. See *In re Olive/Metts Minors*, 297 Mich App at 41-42; *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011).

The best interests hearing was held in August 2015 and respondent had still failed to substantially comply with the parent-agency agreement as ordered in May 2014. Respondent had relapsed into drug use and had been unable to provide two consecutive negative drug screens since October 2014, although he knew that was the requirement for him to resume parenting time with his child. Respondent admitted that his substance abuse had prevented him from being involved in the lives of his now-adult children as they were growing up. Nevertheless, he had not seen this child since June 2014, had not inquired about the child's welfare for months, knew nothing about the child, and shared no parental bond with the child. The psychologist who conducted a psychological evaluation of respondent testified that, considering respondent's extensive substance abuse history despite his participation in several substance abuse programs over the course of several years, it was unlikely that respondent would maintain sobriety in the long-term. For example, respondent completed a substance abuse program in December 2014, but had tested positive for cocaine in January 2015. And from February 2015 through June 2015, respondent tested positive for the narcotic pain medication Tramadol, but failed to provide proof that it had been prescribed to him by a physician. Meanwhile, the child—who had been taken care of by her maternal aunt since February 2014 when she was one month old—was

happy and thriving in the suitable, stable, and safe environment in which she was being raised. Under the circumstances of this case, the trial court did not clearly err when it concluded that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood